IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1430 OF 2005

Smt.Smita Ajay Ralegaobnkar. ... Petitioner.

Vs.

The bank of India & Ors. ...Respondents.

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Mr. M. S. Karnik for the Petitioner.
Mr. R. V. Pai i/b. Haresh Mehta & Co. for the Respondents.

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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 20, 2005.

P.C.:

This Court has been moved in proceedings under Article 226 of the Constitution of India, on a decision of the Bank of India, the Respondent, declining the request of the Petitioner for the grant of compassionate appointment. The Petitioner's husband joined the Bank on 1st January 1979 and was serving as a Special Assistant in the Ghoti Branch when he died on 10th March 2003. On 19th October 2000, a chargesheet was served upon the employee involving allegations of financial irregularities in his dealings as an employee of the Bank. A disciplinary enquiry was convened and the employee was found to have committed

misconduct. He was awarded punishment of censure and a reduction in his scale of pay by one stage permanently. An appeal preferred by the employee, came to be dismissed. The Petitioner has stated that upon the death of her husband, she received an amount of Rs. 3.93 lakhs towards his terminal dues.

2. On 30th March 2003, the Petitioner applied to the Bank for the grant of employment on compassionate grounds. This application was rejected on 16th February 2004 on the ground that the deceased employee had been punished for misconduct. Another application dated 22nd March 2004 was dismissed by the Zonal Manager on 19th June 2004. The Petitioner thereupon moved a proceeding under Article 226 of the Constitution before this Court (Writ Petition 7889 of 2004). By an order dated 18th October 2004, a Division Bench of this Court remanded the matter back to the Respondent for reconsideration having regard to the scheme for compassionate employment.

3. In pursuance of the directions of this Court, the application has been considered once again. By a communication dated 4th January 2005, the General Manager (Human Resources)

of the Bank informed the Petitioner that the Board of Directors at a meeting held on 27th December 2004 reconsidered the issue and came to the conclusion that the application could not be accepted. It has been noted in the decision of the Board that the deceased employee in this case was punished for misconduct involving misappropriation and financial irregularities. Prior to 19th February 2002, the Government of India was exercising the power to determine matters of compassionate appointment where a deceased employee was involved in financial irregularities and the Government had invariably declined such requests where the deceased employee was held guilty of misconduct involving fraud, forgery or misappropriation of funds. After these powers were delegated by the Government of India to the Board of Directors on 19th February 2002, the Board of Directors has continued this policy and has been declining compassionate appointment where a major penalty has been imposed on a deceased employee on account of fraud, forgery or misappropriation of funds. In the present case, the deceased employee was found to be guilty of misconduct involving misappropriation of funds and financial irregularities. Hence, the application was rejected.

4. We have heard Counsel appearing on behalf of the Petitioner and the Respondents. Having perused the order dated 4th January 2005, we do not find any reason to interfere in the exercise of the jurisdiction under Article 226 of the Constitution. In **Umesh Kumar Nagpal vs. State of Haryana**, (1994) 4 SCC 138, the Supreme Court has held that employment by way of compassionate appointment is an exception carved out of the general rules for appointment on the basis of open invitation of application and merit. This exception is to be resorted to in cases of penury where dependents of an employee are left without any means of livelihood. This principle has been reiterated by the Supreme Court in **General Manager (D& PB) vs. Kunti Tiwari** (2004) 7 SCC 271. In the present case, the Respondent has, as a matter of policy, decided that compassionate appointment should invariably be declined where a major penalty is imposed on the deceased employee on account of fraud, forgery or misappropriation of funds. This policy cannot be regarded as arbitrary. The interference of this Court would not be warranted particularly having regard to the narrow confines of judicial review in matters of policy. The deceased employee was guilty of misconduct involving misappropriation and other financial

irregularities. This criterion in the denial of compassionate employment cannot be regarded as extraneous or arbitrary.

5. In the circumstances, we find no merit in the petition, which is accordingly dismissed. There shall be no order as to costs.

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